IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 22 of 2003
In
CRIMINAL CASE No. 4 of 1999
In
COMPANY PETITION No. 212 of 1994
with
CIVIL APPLICATION No 71 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRANKUMAR ROSHANLAL RANKA & 3 - Appellant(s)
Versus
O.L. OF VITA MAZDA LTD. - Opponent(s)

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Appearance :
MR NANDISH CHUDGAR for NANAVATI ASSOCIATES for Appellant(s) : 1 – 4 present
OFFICIAL LIQUIDATOR for Opponent(s) : 1, present

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 01/03/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr. Nandish Chudgar, learned counsel for the appellants. Mr. Kuwadia, the Official Liquidator is also in attendance.

2. The appeal is admitted. With the consent of the parties, the appeal is finally heard.

3. The appellants being aggrieved by the order dated 9.5.2003, directing the Official Liquidator to take possession of particular property alleged to be belonging to the company under liquidation, have come to this Court with a submission that some property did not belong to the company and as such, a direction for dispossession could not be issued nor the Official Liquidator, without making an inquiry into the ownership of the property, which the appellants had purchased, could take possession of the same. We have heard the parties. In our considered opinion, when certain facts are brought to the notice of the learned company Judge and there is no controversy about the correctness of the facts, then, any Judge would presume the facts to be correct and on the said premises, would proceed further in the matter. Undisputedly, in the present matter, the property in dispute was shown to be

the property of the company under liquidation. It was nobody's allegation that the property did not belong to the company under liquidation. If the learned Judge, relying upon the said set of the facts and after taking stock of the situation into consideration passed an order, then, no wrong with the said order can be found. So far as the action of the Official Liquidator is concerned, we must observe that the Official Liquidator is bound by the directions issued by the learned Company Judge.

4. If the appellants are aggrieved by the action of the Official Liquidator or submission of incorrect facts before the learned Company Judge and consequential dispossession, then, they have to bring the facts to the notice of the learned company Judge who has passed the first order, with a request that part of the order be recalled and possession be restored back to them. In an appeal against the directions made by the learned Single Judge, it may not be possible for the appellate Court to make an inquiry into the facts.

5. We dispose of the appeal with a direction in favour of the appellants that they would be entitled to make an application to the learned company Judge that on the facts projected by them and the evidence submitted

by them, they could not be dispossessed and as the dispossession was illegal, they are entitled to restoration of the possession. It goes without saying that the facts submitted before us can certainly be placed before the learned company Judge for arriving to a positive finding. The appeal is accordingly disposed of. Notice is discharged. No costs.

6. In view of the final disposal of the appeal, OJCA No. 71 of 2003 is also disposed of.

[R.S. GARG, J.]

[BANKIM.N.MEHTA, J.]

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